

1		BEFORE THE	
2		ILLINOIS COMMERCE COMMISSION	
3	IN THE MATTER OF:)	
)	
4	THE DEPARTMENT OF TRANSPORTATION)	
	OF THE STATE OF ILLINOIS, for)	
5	and on behalf of the PEOPLE OF)	
	THE STATE OF ILLINOIS,)	
6)	
	Petitioner,)	
7)	
	vs.)	Nos. T11-0100
8)	T11-0104
	BNSF RAILWAY, a/k/a BURLINGTON)	T11-0112
9	NORTHERN SANTA FE RAILWAY)	
	COMPANY and UNKNOWN OWNERS,)	
10)	
	Respondents.)	
11)	
	Petition for approval of the)	
12	taking or damaging of certain)	
	property owned by a common)	
13	transportation carrier in)	
	DuPage County, Illinois, by)	
14	exercising the right of)	
	eminent domain.)	
15			
	Chicago, Illinois		
16	September 8, 2011		
17	Met, pursuant to adjournment, at 1:30 p.m.		
18	BEFORE:		
19	Ms. Latrice Kirkland-Montague,		
	Administrative Law Judge		
20			
21			
22			

1 APPEARANCES:

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
Lin M. Li	23	35			
		52			

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
IDOT 1-4	14	56

1 (Whereupon, IDOT Exhibit
2 Nos. 1-4 were marked for
3 identification.)

4 JUDGE KIRKLAND-MONTAQUE: By the power vested
5 in me by the State of Illinois and the Illinois
6 Commerce Commission, I now call Docket Nos. T11-0100,
7 T11-0104 and T11-0112 for hearing -- I'm sorry --
8 consolidated for hearing. This is in the matter of
9 the Department of Transportation of the State of
10 Illinois versus the BNSF Railway Company, also known
11 as Burlington Northern Santa Fe Railway Company, as
12 respondents. And we are here on petitions for the
13 approval of the taking or damaging of certain
14 properties owned by a common transportation carrier
15 in DuPage County, Illinois, by exercising the right
16 of eminent domain.

17 May I have appearances, please,
18 starting with IDOT.

19 MR. FELDER: Thank you, Judge. Good afternoon.
20 For the record, my name is Douglas Felder,
21 F-e-l-d-e-r. I'm appearing as attorney on behalf of
22 the petitioner, the Department of Transportation. My

1 address is 203 North LaSalle Street, Suite 2300,
2 Chicago, 60601. And my phone number is
3 (312) 634-3509.

4 JUDGE KIRKLAND-MONTAQUE: Okay. BNSF.

5 MR. PRENDERGAST: Good afternoon, your Honor.
6 Bob Prendergast from the law firm of Daley Mohan
7 Groble, 55 West Monroe Street, Suite 1600, Chicago,
8 60603. My phone number is (312) 422-0799. And I'm
9 here on behalf of BNSF Railway Company. And with me
10 today is the manager of public projects, Mr. French
11 Thompson.

12 JUDGE KIRKLAND-MONTAQUE: Okay. Staff.

13 MR. VERCROYSSSE: Thank you, your Honor. Brian
14 Vercruysse, V-e-r-c-r-u-y-s-s-e, representing
15 Commerce Commission Staff with an address of 527 East
16 Capitol Avenue, Springfield, Illinois. Phone number,
17 (312) 636-7760.

18 Your Honor, with us today also is
19 IDOT's new in-house counsel. Gloria Camarena has
20 left the Department for the CTA. So make an
21 appearance, please, Ngozi.

22 MS. OKORAFOR: Yes. It's a tough name.

1 MR. VERCROYSSSE: I apologize.

2 MS. OKORAFOR: My name is Ngozi Okorafor. And

3 I am now, as stated, Assistant Chief Counsel for the

4 Illinois Department of Transportation. Address is

5 the James R. Thompson Center, Suite 6-600, Chicago,

6 Illinois, 60601. Telephone number, (312) 793-3517.

7 JUDGE KIRKLAND-MONTAQUE: Could you please

8 spell your name for the record.

9 MS. OKORAFOR: Sure. It's N -- my first name

10 is N-g-o-z-i; and then my last name is

11 O-k-o-r-a-f-o-r.

12 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

13 All right. Mr. Felder, I guess I will

14 turn the floor over to you.

15 Are you going to have any witnesses

16 testify today?

17 MR. FELDER: Yes. Ms. Lin Li will testify on

18 behalf of the Department of Transportation.

19 JUDGE KIRKLAND-MONTAQUE: Why don't you stand

20 and raise your right hand.

21 (Witness sworn.)

22 JUDGE KIRKLAND-MONTAQUE: You may be seated.

1 And I'll turn it over to you,

2 Mr. Felder.

3 MR. FELDER: Thank you, your Honor.

4 I think you have in front of you
5 several documents that were previously submitted as
6 exhibits. And we just wanted to make sure that they
7 would be marked I think in the order that they're
8 presented to you. The aerial photograph should be
9 Petitioner's Exhibit 1. And then there's three plats
10 with colored marking on them, and that should be
11 Exhibits 2, 3 and 4. Again, those are just the hard
12 copies of what was submitted by e-mail last week.

13 JUDGE KIRKLAND-MONTAQUE: Okay. I have them.
14 I have both copies actually.

15 MR. FELDER: Okay. And with that, I would call
16 Ms. Lin Li as our witness. But if I could make maybe
17 a brief statement --

18 JUDGE KIRKLAND-MONTAQUE: Sure. Go ahead.

19 MR. FELDER: -- just to give you, your Honor,
20 somewhat of an overview of the project involved and
21 the testimony relating to the project and the
22 acquisition of this property from the BNSF Railroad.

1 If you look at -- well, before we do
2 that, the Department of Transportation is undertaking
3 to improve Illinois Route 59 near Naperville,
4 Illinois, sometime in the near future. Plans have
5 been underway. And the property -- it needs a number
6 of properties to make this improvement including the
7 property that's the subject of this action, which are
8 essentially three differently designated properties
9 that are owned by the BNSF Railway. And the
10 property, of course, is located where the BNSF
11 Railway intersects with Illinois 59 in this area of
12 DuPage, County.

13 There's currently an existing
14 underpass or overpass. It's a grade separation, if
15 you will, where the railroad passes over Illinois 59.
16 On the west side of Illinois 59 -- and if you look at
17 what's marked the aerial photograph which is
18 Petitioner's Exhibit 1, if you look at that aerial
19 photograph, there's colored portions of the railroad
20 right-of-way that are the properties that are the
21 subject of this action with the designation of parcel
22 numbers according to the Department of Transportation

1 plats of highways that have been prepared for this
2 matter.

3 If you start, your Honor, with the
4 blue shaded property, that's what's been designated
5 as Parcel No. 1HJ0061PE, which is permanent easement,
6 and there's also 1HJ0061TE. I believe that that
7 property is the subject of the last of the three
8 petitions in this consolidated matter, T11-0112.

9 JUDGE KIRKLAND-MONTAQUE: Okay.

10 MR. FELDER: And as it relates to that
11 property, although if you look hard enough underneath
12 that blue shading -- and you can see that there's an
13 arrow for north, your Honor -- so if you look at
14 what's the southwest corner --

15 JUDGE KIRKLAND-MONTAQUE: Uh-huh.

16 MR. FELDER: -- or quadrant of this area where
17 the railroad intersects Illinois 59, there is an
18 existing pump house. And because the road is
19 depressed in this area -- this is a low area -- there
20 are drainage issues attendant to the existing
21 roadway. There's an existing pump house, a small
22 structure, that is going to be -- part of the project

1 is to tear that down and build a new one. And that
2 is the first part of this project -- or that's the
3 part that the Department will likely address first.

4 The blue area is needed for two
5 purposes. The permanent easement is needed to
6 conduct the demolition of the existing pump house and
7 the construction of the new one and also to
8 replace -- there is an existing pipe that goes
9 underneath the railroad from that pump house to help
10 drainage. Although you can't see it from the aerial,
11 the railroad is essentially at grade; Illinois 59
12 goes underneath at this location. So it is below
13 grade essentially. And there's an existing pipe that
14 already goes underneath the railroad from this pump
15 house or into this pump house, if you will, in a
16 north/south fashion.

17 The improvement will be to rebuild
18 this pump house and to replace the existing pipe to
19 essentially upgrade the facilities. The facilities
20 are quite old, maybe over 30 years old, and are in
21 need of upgrading and improvement. And the temporary
22 easement that's shown in the cross-hatch, that's

1 needed to stage certain construction activities for
2 the demolition and construction of the pump house.

3 Farther to the south, there's a pink
4 or a red area shaded, and that's Parcel 1HJ0064PE.
5 And that's needed for purposes of doing some access
6 roadway improvements and also some drainage issues.
7 And that is a piece of property that the railroad
8 also owns. The railroad property wraps around what
9 is marked, as you can see on Exhibit 1, property
10 that's owned by the City of Naperville and has some
11 power plant facilities located on it. And, again,
12 Parcel 1HJ0064PE is the subject of our petition that
13 has been filed herein as T11-0104.

14 And then the last piece that has its
15 own designation and is highlighted in yellow on
16 Plaintiff's Exhibit 1 is 1HJ0063PE, and there's a PEA
17 and a PEB. And you can see that they're separated by
18 an area where, in fact, the Department already has
19 rights that it's acquired from the railroad at a
20 previous time.

21 In the location where the property --
22 and there's no coloring at all, if you can see that

1 in the exhibit. In that location there's already --
2 there's some drainage that's going on in that area,
3 and there's a pipe that goes underneath the railroad
4 at that area to help drain the water from Waubonsee
5 ditch from the north to the south and then south down
6 toward the intersection with the property, with the
7 road that's just south of this location.

8 Those are the properties that we're
9 seeking to acquire. There's also a temporary
10 easement associated with that, a small temporary
11 easement associated with that highlighted in the
12 yellow portion, and that's to stage construction
13 activities as well.

14 Just to sum up, Judge, this is an
15 existing underpass with existing facilities. The
16 Department is acquiring rights to basically upgrade,
17 improve and make those facilities better and work in
18 a more efficient way as relates to drainage and the
19 flow of traffic at this underpass.

20 And with that, I don't have anything
21 else for an opening, and I would call Ms. Li to
22 testify.

1 JUDGE KIRKLAND-MONTAQUE: Okay.

2 LIN M. LI, P.E.,

3 called as a witness herein, having been first duly

4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. FELDER:

8 Q Ms. Li, would you please state your name

9 and spell it for the court reporter.

10 A My name is Lin M. Li. First name is

11 spelled L-i-n. Last name is spelled L-i.

12 Q And, Ms. Li, what's your current

13 occupation?

14 A I'm a civil engineer.

15 Q By whom are you employed?

16 A Illinois Department of Transportation.

17 Q What are your duties and responsibilities

18 with the Department?

19 A My responsibility is to acquire properties

20 for roadway improvements, more specifically to handle

21 property that the Department cannot acquire through

22 voluntary conveyance documents and have to exercise

1 litigation.

2 Q Okay. So you assist with the eminent
3 domain process in acquiring properties?

4 A Yes.

5 Q And in that capacity are you familiar with
6 the roadway improvement that the Department of
7 Transportation is undertaking of Illinois Route 59
8 near Naperville, Illinois?

9 A Yes.

10 Q And are you familiar with the improvement
11 as it relates to the BNSF Railway location where the
12 railroad intersects Illinois 59 at this location?

13 A Yes.

14 MR. FELDER: Judge, I also put, as I said, the
15 three plats --

16 JUDGE KIRKLAND-MONTAQUE: Uh-huh.

17 MR. FELDER: I have to find my copies.

18 BY MR. FELDER:

19 Q I want to show you what was submitted and
20 is marked as Plaintiff's Exhibit 2 for identification
21 dated September 8, 2011, which is a plat of highways.

22 And I ask you --

1 MR. FELDER: Do you have it, your Honor? This
2 is the one with the yellow marking. And, Counsel?
3 This is the one with the yellow marking.
4 JUDGE KIRKLAND-MONTAQUE: Yes.
5 BY MR. FELDER:
6 Q Plat of highways.
7 Do you recognize that document?
8 A Yes.
9 Q Was the plat prepared by or under the
10 direction of the Department of Transportation?
11 A Yes.
12 Q And does this plat accurately depict the
13 property that's needed from the BNSF Railway Company
14 that's designated as Parcel No. 1HJ0063PEA, PEB and
15 TE for temporary easement?
16 A That's correct.
17 Q And is it also your understanding that this
18 is the plat that is the subject -- depicting the
19 property that is the subject of the petition filed as
20 T11-0100 in this matter?
21 A Yes.
22 Q Can you briefly describe this parcel as

1 depicted on Exhibit 2?

2 A This is parcel -- Parcel 1HJ0063PEA is the
3 area underneath the railroad. It's the existing
4 roadway.

5 Q Okay. There's a road -- Illinois 59 is in
6 that location at the present time; is that your
7 understanding?

8 A Yes.

9 Q Okay.

10 A And 1HJ0063PEB is a triangle shape that's
11 approximately 0.035 acres and runs approximately
12 10 feet deep and 150 feet high.

13 Q From north to south?

14 A North to south, yes.

15 Q Okay. And does the Department need this
16 property at this time from the Burlington Northern
17 Railway in order to make its improvements on Illinois
18 Route 59?

19 A Yes.

20 Q Let me show you what's been previously --
21 what's been previously submitted and is now marked as
22 Plaintiff's Exhibit 3.

1 MR. FELDER: And that's the one with the red
2 marking, Judge.

3 JUDGE KIRKLAND-MONTAQUE: Okay.

4 MR. FELDER: The red shading.

5 JUDGE KIRKLAND-MONTAQUE: I have it.

6 MR. FELDER: Dated September 8, 2011.

7 Counsel, do you have that?

8 MR. PRENDERGAST: Yes, we have it. Thank you.

9 BY MR. FELDER:

10 Q Let me ask you if you recognize that
11 document?

12 A Yes.

13 Q And that's the plat of highways that's
14 prepared by or under the direction of the Department
15 of Transportation?

16 A That's correct.

17 Q And does that plat accurately depict the
18 property that the Department needs from the
19 Burlington Northern -- BNSF Railway to construct the
20 Illinois 59 improvement?

21 A Yes.

22 Q And that property -- what's the designation

1 for that property?

2 A The Department designated the area as
3 1HJ0064PE.

4 Q And is it your understanding that the
5 parcel depicted on Exhibit 3 is the subject of the
6 petition filed herein as T11-0104?

7 A Yes.

8 Q All right. And it's also your
9 understanding, am I correct, that that property is
10 needed for improvements to the access roadway, to the
11 pump house as well as for drainage, general
12 improvements?

13 A Yes.

14 Q Okay. And let me show you Plaintiff's
15 Exhibit 4 which is another plat of highways which has
16 blue and green shading on it.

17 MR. FELDER: If you have that one, your Honor?

18 JUDGE KIRKLAND-MONTAQUE: Yes, I do. Thank
19 you.

20 MR. FELDER: It's dated September 8, 2011.

21 Counsel, do you have that one?

22 MR. PRENDERGAST: Yes, we have that. Thank

1 you.

2 BY MR. FELDER:

3 Q And do you recognize Exhibit 4?

4 A Yes.

5 Q Is that a true and accurate copy of the

6 plat of highways prepared by or under the direction

7 of the Department of Transportation?

8 A Yes.

9 Q Does Exhibit 4 accurately -- fairly and

10 accurately depict the property that's needed from the

11 BNSF Railway at this time to construct the Illinois

12 Route 59 improvement project?

13 A Yes.

14 Q Okay. And briefly can you describe the

15 property depicted on Exhibit 4.

16 A The area highlighted in blue is designated

17 as 1HJ0061PE and is the L-shaped property that is

18 approximately 0.302 acres. The area is needed for

19 rebuild of pump house and construct a retaining wall

20 as well as for drainage, upgrading a drainage pipe in

21 this location.

22 Q Okay.

1 A The area highlighted in green is designated
2 1HJ00TE1 -- 61TE. This area is needed for
3 construction purposes for regrading the access road
4 in this location as well as construct the pump house.

5 Q Okay. So the temporary easement is needed
6 for regrading of the access road and to stage
7 demolition and construction activities relating to
8 the pump house improvement?

9 A Yes.

10 Q All right. Now, is it your understanding
11 that the Department has attempted to acquire the
12 interest in the property that it seeks at this time
13 from the Burlington Northern -- the BNSF Railway
14 Company?

15 A Yes.

16 Q And is it also your understanding that as
17 of this time, the Department has not been able to
18 acquire the interests in property that it needs for
19 purposes of constructing the Illinois Highway 59
20 improvement at this location?

21 A Yes.

22 Q And you're aware that there are some

1 ongoing issues between the Department and the BNSF
2 Railway Company as it relates to certain conveyance
3 documents and title documents that have resulted in
4 at least recent efforts being unsuccessful in
5 acquiring not just this property, but other
6 properties from the Burlington Northern --
7 BNSF Railway that are needed for IDOT improvement
8 projects?

9 A Yes.

10 Q Okay. And if the Department is unable to
11 acquire the property that it needs from the railroad
12 at this location, what will be the result to the
13 Department?

14 A The project will be delayed. The general
15 public will not be able to enjoy the benefit of this
16 project. The purpose of this project is to improve
17 mobility and safety at this location. If the
18 Department is not able to acquire this property, then
19 it will not be able to implement this improvement.

20 Q Okay. Now, is it your understanding that
21 the Department will be entering into an agreement
22 with the BNSF railroad as it relates to construction

1 and construction activities to be conducted at this
2 location when the improvement is actually built?

3 A Yes.

4 Q All right. And is it also your
5 understanding that before the Department will
6 commence any construction activities at this
7 location, it will conclude an agreement to which the
8 BNSF Railway has agreed or approved as it relates to
9 the manner of construction and the type of
10 construction and actually what construction
11 activities will take place?

12 A Yes.

13 Q And that's something that is in the process
14 at this time but has not been yet concluded; is that
15 your understanding?

16 A Yes.

17 Q Okay. And do you have -- strike that.

18 Just prior to the start of this
19 proceeding, we had a discussion with representatives
20 from the railroad in which you were present. You
21 recall that, correct?

22 A Yes.

1 Q Okay. And there was a discussion with
2 regards to certain preliminary construction plans and
3 the status of certain preliminary plans wherein
4 certain improvements, especially as it related to the
5 pump house, were discussed and in which we reviewed
6 certain preliminary plans. Do you recall that?

7 A Yes.

8 MR. FELDER: And, your Honor, I didn't submit
9 this as an exhibit, but I'd like to as a group
10 exhibit now, if we could, as Plaintiff's Group
11 Exhibit 1 -- or Group Exhibit 5. I'm sorry.

12 MR. PRENDERGAST: Just for the record, is that
13 a set of plans for the project?

14 MR. FELDER: It's the set of preliminary plans
15 that we were discussing, and I've got a copy that I
16 can give to you.

17 MR. PRENDERGAST: Okay. Great.

18 MR. FELDER: I think that was the nub of our
19 discussion about getting some documents marked.

20 BY MR. FELDER:

21 Q And let me show you what I've marked as
22 Plaintiff's Group Exhibit 5 dated September 8, 2011,

1 and ask you, is that a true and accurate copy of the
2 preliminary plans that you brought with you and we
3 discussed in some brief fashion before we started
4 this hearing today?

5 A Yes.

6 Q Okay. And the plans contain certain pages
7 with profile sheets and other detailed drawings as it
8 relates to this improvement and particularly as it
9 relates to drainage issues and the pump house
10 reconstruction; is that correct?

11 A That's correct. And also some details on
12 the retaining wall as well as a cross-section in this
13 area.

14 MR. FELDER: Okay. Your Honor, that's all the
15 questions that I have on direct examination.

16 JUDGE KIRKLAND-MONTAQUE: Okay.

17 Mr. Prendergast, do you have any
18 questions for the witness?

19 MR. PRENDERGAST: Yes, your Honor.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. PRENDERGAST:

4 Q With regard to the Route 59 project, is
5 this essentially a widening of Route 59 as it goes
6 under the railroad tracks?

7 A This improvement is to provide consistent
8 three lanes in each direction from Ferry to Aurora
9 Road, so it's a total improvement.

10 Q And Ferry Road is located to the north of
11 the railroad tracks some distance?

12 A Yes. Ferry Road is located, yes, north of
13 the I88 intersection.

14 Q And it's going to go down to Aurora Avenue,
15 as I understand it, to the south?

16 A Yes.

17 Q Okay. And that's some distance south of
18 the railroad tracks?

19 A Yes.

20 Q And is the overall scope of this project to
21 generally make Route 59 from a four-lane to a
22 six-lane highway?

1 A Yes.

2 Q And as part of the project, there's going
3 to be work done under the railroad tracks in order to
4 change the roadway from four lanes to six lanes; is
5 that correct?

6 A That's correct.

7 Q And as far as the bridge structure itself
8 is concerned on the east and west side, is it fair to
9 say that there's not going to be any changes to that?

10 A The overpass structure is not going to be
11 changed. There will be minor repair on the structure
12 itself, but the abutment or the center pier will not
13 be touched.

14 Q And as I understand it, all of Route 59
15 existing roadway will be removed under the bridge,
16 and there will be new pavement put in; is that fair
17 to say?

18 A Yes.

19 Q And will any of that work affect the
20 structural integrity of the bridge there?

21 A No.

22 Q Now, with regard to the easements

1 themselves, if we could look at Exhibit 1 -- and
2 first why don't we go with the blue property that's
3 shown there. Do you see that? The property that's
4 shaded in blue, I should say.

5 A Yes.

6 Q And that's the 61 temporary and permanent
7 easements?

8 A Yes.

9 Q And as far as a permanent easement is
10 concerned, you had indicated that there's going to be
11 a pipe replaced in the area of the blue shaded area
12 of the permanent easement?

13 A That's correct.

14 Q And could you indicate for the record what
15 the size and materials of that pipe will be?

16 A The pipe itself is a 38-inch PVC pipe. The
17 pipe will be kept inside a 66 steel casing.

18 Q Okay. And is it essentially to aid
19 draining in the area?

20 A Yes.

21 Q Is there an existing pipe, though, being
22 taken out of that area or perhaps in the --

1 A There's an existing 30-inch pipe in this
2 location and will be upgraded to a 48-inch pipe.

3 Q And will the other pipe be removed as part
4 of this project?

5 A That's my understanding, yes.

6 Q Could you indicate for the record what
7 construction activities will be necessary in order to
8 remove the existing pipe and to install the new pipe
9 that's going under the tracks?

10 A The proposed plan calls for a steel casing,
11 66 inches of casing that will be jacked underneath
12 the railroad track. So it then would be going to
13 this area away from the railroad track and opened up
14 here and jack the casing.

15 Q Do you know what type of equipment is going
16 to be used as far as jacking or installation of the
17 pipe?

18 A I believe, at a minimum, medium size of
19 heavy equipment will be needed.

20 Q Would it require any type of boom equipment
21 to your knowledge?

22 A I am not sure at this point.

1 Q Do you know if there's going to be any need
2 for any type of equipment or people working on the
3 project to be within 25 feet of any of the railroad
4 tracks that go through the area?

5 A Yes.

6 Q Okay. And is the Department willing to
7 sign any flagger agreements that might be necessary
8 to protect the workers who are working within 25 feet
9 of the railroad tracks?

10 A Yes. The Department is anticipated to
11 include the flagging service in the agreement with
12 the BNSF.

13 Q Okay. And is it your understanding that
14 some type of a construction agreement will also be --
15 will be part of the overall agreement concerning this
16 project?

17 A Yes.

18 Q And will there be requirements for railroad
19 protective insurance and general liability insurance
20 for IDOT and the contractors?

21 A Yes.

22 Q Okay. And will that include clauses that

1 will indicate that BNSF would be an additional
2 insured under those policies?

3 A That's my understanding.

4 Q With regard to the blue shaded area, the
5 permanent easement, is there any other work that's
6 going to be done in that area other than rebuilding
7 the pump house and replacing the pipe that will run
8 under the railroad tracks there?

9 A There will be also a retaining wall built
10 in this location.

11 Q Okay. Could you indicate for the record
12 where the retaining wall is going to be placed?

13 A Retaining wall is proposed at all four
14 quadrants of the railroad and 59 grade separation and
15 at the -- well, a retaining wall between the new --
16 well, the new roadway -- not the new roadway --
17 adjacent to Route 59 between the pump house and 59
18 and also there's a retaining wall built on the
19 southeast quadrant as well as the northwest,
20 northeast quadrant.

21 Q So in all four quadrants, there will be a
22 retaining wall?

1 A Yes.

2 Q And just so I understand as a layperson,
3 what would be the -- what would it be retaining?
4 What's the purpose of the retaining wall?

5 A Is retaining the adjacent property so
6 minimum impact go into the --

7 Q Is it to protect the slopes in the area
8 there?

9 A To protect the slope. A lot of grading
10 needs to be done along the adjacent property.

11 Q And then with regard to the temporary
12 easement in the blue shaded area, that's essentially
13 to stage construction equipment; is that correct?

14 A It's not for stage -- it's for access in
15 constructing this area, but it's not for storage of
16 equipment.

17 Also, the purpose of this temporary
18 easement is needed for regrading the access road that
19 comes off in this area.

20 Q And will that -- what's the duration of the
21 temporary easement that you're seeking?

22 A It's a five-year temporary easement or end

1 of construction, whichever comes first.

2 Q And is there any other purpose for the
3 permanent easement in blue other than for replacing
4 the pipe, rebuilding the pump house and to construct
5 retaining walls?

6 A The Department is seeking a general purpose
7 for roadway -- well, it's seeking a general purpose
8 roadway improvement. So this shaded blue area, the
9 existing abutment is located in this shaded blue
10 area.

11 Q So is part of it for the roadway surface
12 itself?

13 A Some of it.

14 Q Okay. The part that's on the east edge?

15 A Yes.

16 Q Now, as far as maintenance of these
17 facilities into the future, is it your understanding
18 that IDOT is going to maintain the roadway and the
19 retaining walls and the pipe and the pump house?

20 A Yes.

21 Q And as far as the cost of the project is
22 concerned, is IDOT going to bear the cost of the

1 project and any future maintenance?

2 A Yes.

3 Q Now, with regard to the permanent easements
4 that are in yellow -- why don't we take the one that
5 actually appears to be on Route 59.

6 What's the purpose of that permanent
7 easement? I think it's Permanent Easement A.

8 A The purpose of this easement is for roadway
9 purpose, the existing 59 is located.

10 Q Okay. So that would involve the roadway
11 surface and the roadway widening?

12 A Yes.

13 Q And the roadway rebuild under the bridge?

14 A Yes.

15 Q Is there any other reason other than
16 perhaps a retaining wall for Permanent Easement A in
17 yellow?

18 A A retaining wall?

19 Q Anything else besides construction of the
20 roadway and a retaining wall?

21 A As part of the roadway improvement, there's
22 always drainage included for the pavement. Drainage.

1 So there will be a drainage structure put in in this
2 location.

3 Q Will that be underneath the level of the
4 roadway?

5 A Yes. That's also part of what the
6 Department considers the roadway purpose.

7 Q Anything else as far as use of that
8 easement is concerned?

9 A Not that I can think of.

10 Q Okay. Now, if we go to Permanent
11 Easement B, what's the purpose of that easement in
12 yellow on the map, the triangular portion in yellow
13 on Exhibit A -- Exhibit 1?

14 A The Department is building -- connecting an
15 existing 8 by 4 culvert at this location. Waubonsee
16 Creek is running parallel to 59 on the east side of
17 this -- on the east side of the roadway. The
18 Department has proposed putting in a double 8 by 4
19 box at this location to close -- to keep this creek
20 closed. This creek runs on the east side of 59 from
21 the railroad track approximately 4 or 500 feet and
22 cross 59 and go west.

1 Q Okay. So is the only use anticipated for
2 Permanent Easement B in yellow on Exhibit 1 for
3 construction of a culvert?

4 A The purpose of roadway improvement includes
5 drainage improvement.

6 Q Okay. What other drainage improvements
7 would be contemplated for Permanent Easement B other
8 than the culvert?

9 A The detail plan is still in development.
10 At this time all I can see is the culvert. There
11 might be more details that need to be included.

12 Q And does the culvert run under the tracks?

13 A Yes.

14 Q From north to south?

15 A The existing culvert run under the track.
16 That culvert is 8 by 4 box culvert. That culvert
17 will remain, will not be replaced.

18 Q So is there any work that's going to be
19 done in that area as part of the project?

20 A Yes.

21 Q And what's going to be done there?

22 A Well, there's an existing culvert that runs

1 underneath the track. We'll connect this culvert
2 with a double 8 by 4 culvert, so those connections
3 will be done in this location.

4 Q Okay. And as far as the temporary easement
5 in the yellow area, what's the purpose of that
6 temporary easement?

7 A The purpose of the temporary easement is
8 for construction to put in those culverts.

9 Q Okay. Is the Department of Transportation
10 agreeable to return the areas of the temporary
11 easements into their existing condition before the
12 project after it's completed?

13 A It's the Department's policy to restore the
14 temporary easement to its pre-existing condition as
15 possible. Of course, if trees exist in this
16 temporary easement that they need to cut down, then
17 the Department will replace it with sodding, but we
18 cannot replace a mature tree. I don't know in this
19 case that there is a tree or not.

20 Q And what's the duration anticipated for
21 Temporary Easement 1HJ0063?

22 A The Department seeks to acquire a five-year

1 temporary easement or end of construction, whichever
2 comes first.

3 Q Now, as part of the work that's done on
4 either permanent easement that's shaded in yellow,
5 either A or B, do you anticipate that there will be
6 any equipment or people within 25 feet of the tracks
7 in the course of the work done in that area?

8 A Yes. Most likely in the 25 feet, but below
9 the railroad track.

10 Q Okay. And at this point do you know if
11 there's going to be any need for any type of boom
12 equipment or other equipment that may raise up toward
13 the level of the tracks within 25 feet of any of
14 those tracks?

15 A At this time, I don't know.

16 Q But if there is, is IDOT willing to sign,
17 you know, as part of the overall maintenance
18 agreement, flagging agreements with regard to that
19 area as well?

20 A Yes.

21 Q And just as far as the overall scope of
22 this project, the insurance requirements that I asked

1 you about with railroad protective and commercial
2 liability and having the railroad -- the BNSF be an
3 additional insured on those policies, will that cover
4 the entire project?

5 A Yes.

6 Q One point I'd like to clear up, Mr. Felder
7 was asking you some questions about the negotiations
8 prior to the filing of this petition concerning the
9 permanent and temporary easements.

10 Were you personally involved in those
11 negotiations?

12 A No.

13 Q Okay. So as to what paperwork was
14 submitted or, you know, what the terms exactly were,
15 you wouldn't have personal knowledge of that; is that
16 correct?

17 A I don't understand the question.

18 Q Okay. Is it part of your work on this
19 project to have been involved in the negotiation or
20 the drafting or interpreting of any of the paperwork
21 concerning any offers that were made before the
22 filing of this petition?

1 A I reviewed the file of this parcel.

2 Q So you know there was an offer made and
3 there was no signed paperwork; is that correct?

4 A That's correct.

5 Q As far as the details of the terms of that
6 paperwork, is that something that you don't get
7 involved with as a civil engineer?

8 A No.

9 Q Okay. And as to how those negotiations
10 went -- I just don't want BNSF to be portrayed as the
11 bad guy in this -- as to how those negotiations went,
12 you don't know if it was, like, Here, sign this
13 paperwork, take it or leave it, or if there was
14 actual true negotiations involved; you wouldn't know
15 that?

16 A Those would be properly documented in the
17 negotiation report if any communication take place.
18 Based on review of the file, the negotiation report,
19 there's an offer made, communication take place,
20 there's no conclusion of the negotiation.

21 Q Okay. And, let's say, if the BNSF wanted
22 to change the terms of IDOT's paperwork, do you know

1 IDOT's policies as to whether the paperwork can be
2 changed in any way, or is that something you don't
3 deal with as a civil engineer?

4 A When a property is acquired, negotiations
5 take place. There's some language that could be
6 negotiated, but that language needs to be approved by
7 our chief counsel.

8 Q Okay. And as to whether that occurred or
9 didn't occur, you don't know in this case?

10 A There's no such documentation in the
11 negotiation report.

12 Q And with regard to any work that may be
13 done on or within 25 feet of the railroad tracks, is
14 IDOT agreeable to have their contractors comply with
15 any federal regulations concerning worker safety for
16 that type of work?

17 A That's the requirement, for the contractor
18 to comply.

19 Q Will any of the work that's done in this
20 project cause any type of drainage problems for the
21 track structures or the areas near the bridge
22 structures?

1 A Cause problems? I don't believe so.

2 Q And, finally, with regard to the permanent
3 easement that's shaded in red on Exhibit 1, what's
4 the purpose of that easement?

5 A The roadway purpose includes the retaining
6 wall that will be extended to this area as well as an
7 access road in this location and drainage. There's
8 also a drainage pipe that would be replaced in this
9 location as well.

10 Q Okay. And where will that drainage pipe
11 run to?

12 A Run just south of this location to
13 Waubonsee Creek, just south of this property.

14 MR. FELDER: Do you want to use Exhibit 1 to
15 show where that is?

16 THE WITNESS: Waubonsee Creek is coming from
17 east of this location, runs parallel on the east side
18 of 59 and cross 59 and go west, so just south of
19 Parcel 64.

20 BY MR. PRENDERGAST:

21 Q And with regard to the permanent easements
22 that are shaded in yellow and in red, if there's any

1 future maintenance with regard to the areas involved
2 in the project, is it your understanding that IDOT
3 will maintain those areas and pay for any necessary
4 maintenance in those areas?

5 A Yes.

6 MR. PRENDERGAST: That's all I have. Thank
7 you.

8 JUDGE KIRKLAND-MONTAQUE: Okay.
9 Mr. Vercruysse.

10 MR. VERCRUYSSSE: Thank you, your Honor. Just a
11 few questions.

12 CROSS-EXAMINATION

13 BY

14 MR. VERCRUYSSSE:

15 Q Ms. Li, in terms of the Department's
16 desired time frame for construction, can you give us
17 the letting schedule that you have.

18 A This project is currently scheduled for
19 January 2012. We're working toward this schedule,
20 but there is the chance that this schedule will be
21 continued to March or June.

22 Q Okay. Thank you.

1 Group Exhibit 5 was provided to the
2 parties here with the preliminary plans, and I'd just
3 like to confirm a few of the items.

4 On the west side of the street, Group
5 Exhibit 5 shows a 10-foot wide multi-use path that
6 approaches this structure and then it narrows down to
7 an approximately 6-foot wide multi-use path.

8 Can you confirm that that's the design
9 that's called for?

10 A Yes.

11 Q Is there existing sidewalk under the
12 structure that you're aware of?

13 A I believe so, but I'm not a hundred percent
14 sure.

15 Q But the multi-use path would be following a
16 course and then would align with what's referred to
17 as 0061 permanent easement highlighted in blue as
18 referred to in the Exhibit 1 aerial?

19 A Yes.

20 Q Is that multi-use path going to be the
21 jurisdiction of the Department, or was that requested
22 from another agency that you're aware of?

1 A I believe it's requested by Naperville.

2 Q Okay. Under the structure itself, the
3 bridge, is it under the jurisdiction and owned by the
4 Department currently?

5 A Yes.

6 Q Okay. It noted that there was going to be
7 bridge beam painting in the project; is that correct?

8 A Yes.

9 Q As well as any sort of repair to the
10 concrete abutments and other walls associated with
11 the structure; is that correct?

12 A Yes.

13 MR. VERCRUYSSSE: Thank you.

14 No further questions. Thank you very
15 much.

16 Thank you, your Honor.

17 JUDGE KIRKLAND-MONTAQUE: Okay. I have a
18 question, just a general question: Route 59, is
19 there a common name for that street that might be
20 more recognizable?

21 MR. VERCRUYSSSE: Through this area, I'm not
22 aware of it. To the north, it's Sutton. But down

1 through here, I don't believe.

2 JUDGE KIRKLAND-MONTAQUE: I'm just curious.

3 Mr. Prendergast, do you have a

4 witness?

5 MR. PRENDERGAST: No, we are not going to call

6 any witnesses.

7 JUDGE KIRKLAND-MONTAQUE: Mr. Felder, do you

8 have anything further?

9 MR. FELDER: No, just Ms. Li.

10 JUDGE KIRKLAND-MONTAQUE: Okay.

11 MR. FELDER: Other than to offer into evidence

12 Exhibits 1 through 5.

13 JUDGE KIRKLAND-MONTAQUE: Okay. Any objection

14 to Exhibits 1 through 5?

15 MR. PRENDERGAST: With 5 just with the

16 understanding that these are preliminary,

17 undeveloped -- fully developed plans.

18 MR. FELDER: I'll withdraw that. I won't offer

19 them. Just informational.

20 JUDGE KIRKLAND-MONTAQUE: 1 through 4 then.

21 MR. PRENDERGAST: For informational purposes

22 only, that's fine if they're admitted into the

1 record.

2 MR. VERCRUYSSSE: Staff doesn't have an
3 objection, your Honor, informational or if you wanted
4 it part of the record.

5 MR. FELDER: I only -- I'll withdraw offering
6 5. I'll offer 1 through 4. 5 I've given copies and
7 they were provided in the spirit of updating the
8 information as we have it today.

9 JUDGE KIRKLAND-MONTAQUE: Okay. So
10 Petitioner's Exhibits 1 through 4 are admitted into
11 evidence.

12 MR. PRENDERGAST: No objection, your Honor.

13 JUDGE KIRKLAND-MONTAQUE: No objection. Okay.
14 I'll admit those four.

15 (Whereupon, IDOT Exhibit
16 Nos. 1-4 were admitted into
17 evidence.)

18 JUDGE KIRKLAND-MONTAQUE: And, Staff, could you
19 make a statement on the record regarding Staff's
20 position on the project.

21 MR. VERCRUYSSSE: Yes, your Honor.

22 Staff has no objection to the

1 Department's request for the use of eminent domain
2 for the parcels identified for the Illinois Route 59
3 improvement.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

5 MR. VERCRUYSSSE: Thank you.

6 JUDGE KIRKLAND-MONTAQUE: Is there anything
7 further?

8 Mr. Prendergast, did you want to make
9 a statement on the record?

10 MR. PRENDERGAST: Well, your Honor, some of the
11 plans are still in the development process. I think
12 we may be able to proceed to order. But what I would
13 suggest is, if Mr. Felder wants to draft an order and
14 I could provide comments on it, and perhaps we could
15 reach an agreed order on it. But it depends what's
16 in there, what's proposed. But generally we are not
17 taking a position until we, you know, have a full
18 understanding of what the project entails. We would
19 be willing to consider working toward an agreed order
20 at this time.

21 JUDGE KIRKLAND-MONTAQUE: Okay. Mr. Felder,
22 were you about to say something?

1 MR. FELDER: No. Other than I'll be happy to
2 prepare an order and submit it to Mr. Prendergast for
3 his review.

4 This is a little bit unusual because
5 usually we're here asking you to do it yesterday
6 because we have to acquire the property because we're
7 trying to let a contract next month. We're not quite
8 in that position. But, again, January could be
9 possible or likely even.

10 And in terms of the time frame, I
11 guess what are we dealing with with October sessions?
12 Is there a later October session?

13 JUDGE KIRKLAND-MONTAQUE: I don't have the
14 schedule with me. Hold on.

15 MR. FELDER: Because I'd like to try to, of
16 course, cooperate with Mr. Prendergast and see if we
17 can submit something to you jointly.

18 JUDGE KIRKLAND-MONTAQUE: Well, there appears
19 to be at this time October 5th and October 19th.

20 MR. FELDER: Okay. I guess my hope would be to
21 have it concluded or in a posture to be concluded by
22 the October 19th session. So I'm not sure how you

1 would like to proceed. We could set a date out two
2 weeks to see if we have some agreement. We could set
3 anything you want, actually.

4 JUDGE KIRKLAND-MONTAQUE: I'm thinking also.

5 MR. FELDER: Or you could issue -- in the past
6 you've issued proposed orders and given us seven days
7 to comment and maybe that's the better way to do it
8 or at least the way to keep it --

9 JUDGE KIRKLAND-MONTAQUE: Moving.

10 MR. FELDER: -- moving toward October.

11 MR. VERCRUYSSSE: Mr. Prendergast, do you see
12 any issues other than an agreed order identifying
13 that the Commission authorizes the Department to use
14 eminent domain? I don't think it will get into
15 anything as far as your issues with title or
16 documents associated with the transaction. So I
17 don't know if we're making a bigger issue if we get
18 it drafted. Mr. Prendergast has always been very
19 quick in his review and working with his client. So
20 do you foresee --

21 MR. PRENDERGAST: I may want to propose some
22 language, you know, that perhaps --

1 JUDGE KIRKLAND-MONTAQUE: Why don't I do a
2 draft order and then you guys can respond to it?

3 MR. FELDER: Very good.

4 MR. PRENDERGAST: That would be fine, your
5 Honor.

6 JUDGE KIRKLAND-MONTAQUE: So I'll go ahead and
7 mark it heard and taken because I don't think there's
8 any more evidence to hear -- to be presented. And I
9 will use some of the prior orders in these types of
10 matters as a guide to draft a proposed order, and you
11 will have your time to file briefs on exceptions if
12 you want.

13 MR. VERCruysse: Thank you, your Honor.

14 JUDGE KIRKLAND-MONTAQUE: All right. Thank
15 you.

16 HEARD AND TAKEN.

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